

## § 498.202

*ALJ* refers to an Administrative Law Judge of the Departmental Appeals Board.

*Civil monetary penalty cases* refer to all proceedings arising under any of the statutory bases for which the Inspector General, Social Security Administration has been delegated authority to impose civil monetary penalties.

*DAB* refers to the Departmental Appeals Board of the U.S. Department of Health and Human Services.

[61 FR 65468, Dec. 13, 1996]

### § 498.202 Hearing before an administrative law judge.

(a) A party sanctioned under any criteria specified in §§ 498.100 through 498.132 may request a hearing before an ALJ.

(b) In civil monetary penalty cases, the parties to a hearing will consist of the respondent and the Inspector General.

(c) The request for a hearing must be:

(1) In writing and signed by the respondent or by the respondent's attorney; and

(2) Filed within 60 days after the notice, provided in accordance with § 498.109, is received by the respondent or upon a showing of good cause, the time permitted by an ALJ.

(d) The request for a hearing shall contain a statement as to the:

(1) Specific issues or findings of fact and conclusions of law in the notice letter with which the respondent disagrees; and

(2) Basis for the respondent's contention that the specific issues or findings and conclusions were incorrect.

(e) For purposes of this section, the date of receipt of the notice letter will be presumed to be five days after the date of such notice, unless there is a reasonable showing to the contrary.

(f) The ALJ shall dismiss a hearing request where:

(1) The respondent's hearing request is not filed in a timely manner and the respondent fails to demonstrate good cause for such failure;

(2) The respondent withdraws or abandons respondent's request for a hearing; or

(3) The respondent's hearing request fails to raise any issue which may

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properly be addressed in a hearing under this part.

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### § 498.203 Rights of parties.

(a) Except as otherwise limited by this part, all parties may:

(1) Be accompanied, represented, and advised by an attorney;

(2) Participate in any conference held by the ALJ;

(3) Conduct discovery of documents as permitted by this part;

(4) Agree to stipulations of fact or law which will be made part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present oral arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

(b) Fees for any services performed on behalf of a party by an attorney are not subject to the provisions of section 206 of title II of the Social Security Act, which authorizes the Commissioner to specify or limit these fees.

[61 FR 65469, Dec. 13, 1996]

### § 498.204 Authority of the administrative law judge.

(a) The ALJ will conduct a fair and impartial hearing, avoid delay, maintain order and assure that a record of the proceeding is made.

(b) The ALJ has the authority to:

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses at hearings and the production of documents at or in relation to hearings;

(6) Rule on motions and other procedural matters;

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(7) Regulate the scope and timing of documentary discovery as permitted by this part;

(8) Regulate the course of the hearing and the conduct of representatives, parties, and witnesses;

(9) Examine witnesses;

(10) Receive, exclude, or limit evidence;

(11) Take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact; and

(13) Conduct any conference or argument in person, or by telephone upon agreement of the parties.

(c) The ALJ does not have the authority to:

(1) Find invalid or refuse to follow Federal statutes or regulations, or delegations of authority from the Commissioner;

(2) Enter an order in the nature of a directed verdict;

(3) Compel settlement negotiations;

(4) Enjoin any act of the Commissioner or the Inspector General; or

(5) Review the exercise of discretion by the Office of the Inspector General to seek to impose a civil monetary penalty or assessment under §§ 498.100 through 498.132.

[61 FR 65469, Dec. 13, 1996]

### § 498.205 Ex parte contacts.

No party or person (except employees of the ALJ's office) will communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

[61 FR 65469, Dec. 13, 1996]

### § 498.206 Prehearing conferences.

(a) The ALJ will schedule at least one prehearing conference, and may schedule additional prehearing conferences as appropriate, upon reasonable notice to the parties.

(b) The ALJ may use prehearing conferences to address:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact as to the contents and authenticity of documents and deadlines for challenges, if any, to the authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at a hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) The time and place for the hearing and dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery of documents as permitted by this part;

(9) Such other matters as may tend to encourage the fair, just, and expeditious disposition of the proceedings; and

(10) Potential settlement of the case.

(c) The ALJ shall issue an order containing the matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

[61 FR 65469, Dec. 13, 1996]

### § 498.207 Discovery.

(a) For the purpose of inspection and copying, a party may make a request to another party for production of documents which are relevant and material to the issues before the ALJ.

(b) Any form of discovery other than that permitted under paragraph (a) of this section, such as requests for admissions, written interrogatories and depositions, is not authorized.

(c) For the purpose of this section, the term documents includes information, reports, answers, records, accounts, papers, memos, notes and other data and documentary evidence. Nothing contained in this section will be interpreted to require the creation of a document, except that requested data stored in an electronic data storage system will be produced in a form accessible to the requesting party.